Mahat had fractures of the mid-shaft of the right radius and ulna and the right femur. Compression plating of the right radius and ulna was done on August 24, 1981 and intramedullary nailing of the right femur was done on September 2, 1981. Thereafter his right knee was stiff and his right elbow was limited in supination. He had scars on his forearm and thigh and on the right gluteal region. There were some limitation of movements in the right hip. He had an abnormal extension of 10 degrees in the right knee and a limitation of flexion also which would prevent him from squatting and sitting cross-legged. He was a piling operator and his injuries were such that he would not be able to return to his job as a piling machine operator. The parties agreed the special damages at $4,500 and his general damages at $34,000 but his loss of earnings were disputed. Mr. Jega claimed that since there was evidence to show that Mahat was earning $700 per month as a piling machine operator the Court should award him that sum for past loss of earnings on a basis of total incapacity for 18 months from August 12, 1981 until his discharge on March 11, 1983. From that day until the day of the trial which is 26 months he claimed for a partial loss of $300 per month. For future loss he claimed at the rate of $300 per month for 15 years. But the problem with his claim is that Mahat was not quite forthcoming about the sources of his income after this accident. He admitted that he could drive a car and was in fact maintaining one. He says that he goes walking about selling shirts now but does not do anything else. I agreed with Mr. Varughese that the plaintiff must mitigate his losses. The right figure for the period of his total incapacity, must be $700 per month but the partial loss cannot be $300 as claimed and I agree with Mr. Varughese that $100 per month would be generous. It would be more convenient to take this as a single head of future loss and I would give it what the actuarial tables yield for a period of 17 years and 2 months at $100 per month.

As for the 2nd plaintiff, Zaleha, the parties agreed her special damages at $600 and her general damages at $40,000 for pain and suffering alone. She had a fracture of the left acetabulum and superior ramus of the right pubic bone and abrasions and lacerations. The pleading and the medical report spelt out a whole host of problems which I do not need to set out here in detail. Suffice it to say, that as a result of her injuries, she cannot move her hips, knees and feet with normal facility, walking is barely possible and is at a slow rate. She walks with a limp and is liable to lose her balance easily. In her case also, the only dispute was her claim for earning capacity because she could not function comfortably in her occupation as a telephone operator. Since the accident she has ceased to do any night shifts. She has 10 years' service with the Telecoms, Singapore and is still employed there.

Unfortunately, there was absolutely no evidence whatsoever before the Court from her employers, or anyone else for that matter, that she would not continue to be gainfully employed in her present post. It was not suggested or proved that by not working on shift duties or at night, she had been deprived of an opportunity of earning overtime or other additional emoluments, which she would not otherwise have received. This part of the 2nd plaintiff's claim must therefore fail for lack of evidence.

The plaintiffs are both very presentable, well-mannered persons who have both very pleasing dispositions which made it additionally difficult for me to cope with the feeling that the result of my findings must be that they will leave this Court without anything to sweeten the pain which this accident had brought both of them. But the evidence led has not provided the legal basis required to make the finding in their favour and I must therefore dismiss this action with costs.

Claim dismissed.

Solicitors: *John & Jega; Varughese & Co.*

RE THIAN CHI SING (DEBTOR);

EX PARTE SCOTT & ENGLISH (MALAYSIA) SDN. BHD. (CREDITOR)

[A.C.J. (Tan Chiaw Thong J.) June 24, 1985]

[Miri – Bankruptcy No. KG. 33 of 1984]

Bankruptcy – Creditor's petition – Order for substituted service – Whether order should be drawn up – R.H.C. 1980, O.42 rr.9(2)(b)(iii) & 9(3)(d) and O.48 r.9 – Bankruptcy Rules, 1969, rr. 136 & 152.

Practice and Procedure – Bankruptcy – Creditor's Petition – Order for substituted service – Whether should be drawn up – R.H.C., 1980, O.42, r.9(2)(b)(iii) & r.9(3)(d), O.48 r.9 – Bankruptcy Rules 1969, rr. 136 & 152.

In relation to both substituted service of a bankruptcy notice or a creditor's petition where an order has been granted, an order should be drawn up.

NOTICE OF APPEAL.

T.O. Thomas for the appellant/creditor.

Cur. Adv. Vult.

Tan Chiaw Thong J. : By this Notice of Appeal the creditor appeals to this Court against the decision of the Senior Assistant Registrar given on April 10, 1985, refusing to sign the Notice of Substituted Service of the Creditor's Petition filed on March 26, 1985 on the ground that "before I can sign it, you are required to have the order obtained from the *Ex Parte* Summons In Chambers dated March 22, 1985 extracted/sealed first."

In the course of his submission learned counsel for the appellant/creditor has submitted two lists containing cases in the past where in respect of either substituted service of bankruptcy notices or creditors' petitions, upon approval of the applications for substituted service respectively, no order was drawn up, extracted or sealed. It would appear that hitherto the practice has not been uniform in that there are cases where, after an application for substituted service of either a bankruptcy notice or a creditor's petition has been approved by the relevant officer of this Court, no order was drawn up, whereas in other cases they were done.

In his submission, learned counsel for the appellant/creditor has emphasised that the express provision of Order 48 rule 9 of the Rules of the High Court, 1980 requires that every order of the Court shall be drawn up, subject to the exceptions therein prescribed, unless the Court otherwise directs. Learned counsel for the appellant/creditor has also stressed that obviously, no order need be drawn up under the 1980 Rules in cases where notices are published under the name of the Registrar or is an act to be done by the Registrar. In this connection, reference is made to Order 42 rule 9(2) (b) (ii) which, read with rule 9(3) (d), provides, *inter alia,* that an order relating to the granting of leave for the doing of any act to be done by an officer of the Court other than a solicitor, need not be drawn up unless the Court otherwise directs. It was also pointed out that where sealed copies are required of any order in bankruptcy proceedings, the Bankruptcy Rules would say so – for example, rules 136 and 152 – and there is nothing in the Rules about the need for drawing up the order granting leave to serve the Creditor's Petition herein by substituted service.

It is true that in the instant case, substituted service of the Bankruptcy Notice was granted and the substituted service was effected without an order being drawn up, but the point here is whether upon the approval of an application for substituted service, be it in relation to a bankruptcy notice or a creditor's petition, an order granting such leave need be drawn up which entails it being extracted and sealed as well. It is true that in the Bankruptcy Rules and, for that matter, in the Bankruptcy Act itself, there would appear to be no express requirement for an order granting leave to effect substituted service of a bankruptcy notice or a creditor's petition to be drawn up; but in this connection, in my view, it is pertinent to note that under item 50 under the heading "Petitioning Creditor's Solicitor's Bill of Costs" prescribed under the Bankruptcy Costs Rules 1969, the following item appears as item 50: "Attending to swear and file affidavit and to obtain order for substituted service and drawing up order .. $10.00." This item appears under the sub-heading "Costs for Substituted Service where the Debtor keeps out of the way to avoid Service". In my view, the existence of this item implies the necessity for the drawing up of an order of substituted service. In this connection, reference I think may be made to the corresponding English procedure under which Form No. 7 in the Bankruptcy Forms prescribed under the English Bankruptcy Rules, 1952, relates to an order for substituted service of a creditor's petition or a bankruptcy notice. It refers to rules 141 and 154 of the 1952 Rules. A perusal of these English Rules also does not disclose any express requirement therein for an order to be drawn up; but it would appear that the existence of this form relating to an order for substituted service must necessarily imply that an order must be drawn up.

For the reasons given, therefore, I am of the view and hold that in relation to both substituted service of a bankruptcy notice or a creditor's petition where an order has been granted, an order should be drawn up. Accordingly, the appeal against the decision of the Senior Assistant Registrar is dismissed.

Appeal dismissed.

Solicitors: *Thomas & Co.*